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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,460	02/11/2002	Kuo Shih	1211025	8957
7590	12/11/2003		EXAMINER	
Keith Kline PRO-TECHTOR INTERNATIONAL SERVICES 20775 Norada Court Saratoga, CA 95070-3018			MADSEN, ROBERT A	
			ART-UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,460

Applicant(s)

SHIH, KUO

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "12" has been used to designate both the jointed side and the top in the specification (See line 11 page 4 of the Specification). The examiner believes this was typographical and the jointed side should be "13". A proposed drawing correction, amendment to the specification, or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Indefinite Claim Language

2. There is insufficient antecedent basis for the following limitations in claim 2,4,5. None of these limitations appear in the independent claim 1:

Claim 2: "the food inside the container" and "the fruit" (the container is empty)

Claim 4: "the slot hole".

Claim 5: "the convex block".

For examination purposes these limitations will be understood to be "fruit that may be inside the container", "a slot hole", and "a convex block".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by

Korine (US 5263634).

5. Korine teaches a 1 piece food carton with air permeability, which may be plastic (i.e. unitarily molded), and comprising a retaining hole (i.e. item 54), retainer (i.e. item 40), permeability holes (i.e. either side of item 22) on the jointed side, and supporting block formed the double wall structure formed by folding item 28 into item 30 (See Column 2, lines 5-63, Figures 1 and 2).

6. Claims 1, and 6 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Cadiente et al. (US 20030198714).

7. Regarding claims 1 and 6, see Page 1, Paragraph 00002, Page 5, Paragraphs 0066-0069 in light of Page 4 Paragraphs 0057-0059, wherein the supporting block is the portion of the bottom of the container that juts into the container to support item 59 in Figure 3A.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cadiente et al. (US 20030198714) as applied to claims 1 and 6 above, further in view of Krupa et al. (US 5456379)

10. Regarding claim 2 and 4, although Cadiente et al. teach holes in the bottom portion of the fruit container, Cadiente et al. are silent in teaching slot holes or L-shaped holes disposed on posts creating concavo/convex structures formed at the inner and outer rims.

11. Krupa et al. also teach unitarily molded fruit containers with holes in the bottom portion of the container that provides ventilation of the food held therein. However, Krupa et al. additionally provides elongated channels creating concavo/convex structures at the inner/outer rim (formed by items 42) having L-slot holes (item 46). The purpose of the convex/concavo structures is to provide rigidity and support, whereas the purpose of the longitudinal L-shaped holes is to drain fluids to from the container (Column 2, line 15 to column 3, line 6, Column 4, lines 4-10, Figures 1-4).

12. Therefore, it would have been obvious to modify the main body container structure of Cadiente et al. and provide L-shaped holes disposed on posts creating

concavo/convex structures formed at the inner and outer rims since Krupa et al. teach the posts provide strength and rigidity to a ventilated fruit container, and the L-shaped slots provide a means form draining the liquid from the container . One would have been substituting one conventional ventilated main body container design for another for the same purpose.

13. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cadiente et al. (US 20030198714) as applied to claims 1 and 6 above, further in view of Padovani (GB 2195318).

14. Regarding claims 3 and 5, Cadiente et al. teach the four corners of the container may have snap-like connections and that a there is an opening between the top and main body on each side of the container (i.e. Paragraphs 0066-0069 in light of Page 4 Paragraphs 0057-0059), but are silent in teaching convex blocks per se.

15. Padovani also teaches a unitarily molded food package with air permeability between the top and the main body. Padovani provides a convex block for the snapping means so that the air permeable space between the top and container body is maintained (See Figures 1 and 2, Abstract, Page 1, lines 100-127).

16. Therefore it would have been obvious to modify Cadiente et al. and provide convex blocks for the snapping means for sealing the top to the main body since Cadiente et al. teach an air permeable space between the top and main body is maintained even when the four corners are sealed to each other and Padovani teaches providing a convex block in combination with a snapping means to maintain an air

permeable space between the top and main body is maintained even when the corners are sealed to each other.


Conclusion


17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Cadiente et al. (US 6007854) and Hayes et al. (US 6644494 B2) teach stackable produce container with openings between the body and lid. Guillin (US 5833116) teaches an opening on each side of a ribbed container between the top and body for ventilation. Hohnjec (US 351270) teaches a sealing means for a hinged container.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9310.

20. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
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Robert Madsen 
Examiner
Art Unit 1761